

Letters of Dismissal and Caution



A *Letter of Dismissal and Caution* constitutes the Commission's written confidential suggestions and recommendations to a judge upon conclusion of an investigation, in lieu of commencing formal disciplinary proceedings. A *Letter of Caution* is a similar communication to a judge upon conclusion of a formal disciplinary proceeding and a finding that the judge's misconduct is established. Cautionary letters are authorized by the Commission's rules, 22 NYCRR 7000.1(l) & (m).

Where the Commission determines that a judge's conduct does not warrant public discipline, it will issue a cautionary letter, privately calling the judge's attention to ethical violations that should be avoided in the future. Such a communication has value not only as an educational tool but also because it is essentially the only method by which the Commission may address a judge's conduct without making the matter public.

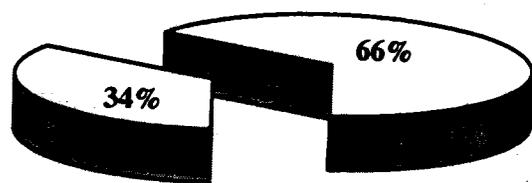
In 2001, the Commission issued 40 Letters of Dismissal and Caution and four Letters of Caution. Twenty-nine town or village justices were cautioned, including six who are lawyers. Fifteen judges of higher courts – all lawyers – were cautioned. The caution letters addressed various types of conduct, as the examples below indicate.

Improper Ex Parte Communications.

Four town or village justices were cautioned for having unauthorized *ex parte* communications on substantive matters in pending cases. Two of them had private meetings with prosecutors to discuss potential plea bargains, and two others had substantive discussions with witnesses or parties outside court and then disposed of the cases based on these discussions.

Political Activity. Eight judges were cautioned for improper political activity. The Rules Governing Judicial Conduct prohibit judges from attending political gatherings, endorsing other candidates or otherwise participating in political activities except for a certain specifically-defined "window period" when they themselves are candidates for elective judicial office. Judicial candidates are also obliged to campaign in a manner that reflects appropriately on the integrity of judicial office, *inter alia* avoiding pledges or promises of conduct if elected, and avoiding misrepresentations of their or their opponent's qualifications. One judge was cautioned for not closing his campaign committee in a timely way and in an authorized manner, e.g. by failing to return surplus funds in a

2001 Cautions



□ Higher Court Judge (Left)
□ Lower Court Judge (Right)

timely manner to contributors on a *pro rata* basis. Four judges were cautioned for inaccurate, misleading or undignified statements in their campaign literature. Two others were cautioned for improperly participating in the political campaigns of other candidates.

Conflicts of Interest. All judges are required by the Rules to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned. In 2001, five judges were cautioned for relatively isolated conflicts of interest, such as failing to disclose and presiding over a case involving a former client or business associate of a relative.

Inappropriate Demeanor. Five judges were cautioned for discourteous, intemperate, indecorous or otherwise offensive demeanor toward those with whom they deal in their official capacity, usually in relatively isolated circumstances rather than as part of a discernible pattern.

Poor Administration;

Failure to Comply with Law. Eight judges were cautioned for failing to meet certain mandates of law, either out of ignorance or administrative oversight. Two town justices were cautioned for failing to administer oaths to witnesses. Two others had bail practices that were inconsistent with law. One granted an Adjournment in Contemplation of Dismissal without the requisite approval of the District Attorney. Two other town justices were cautioned for inordinate delays in scheduling or deciding two particular cases, notwithstanding repeated requests.

Lending the Prestige of Office To Advance Private Purposes. Judges are prohibited by the Rules from lending the prestige of judicial office to advance a private purpose, including such laudable activities as charitable fund-raising. In 2001, five judges were cautioned for such activity, such as intervening in a spouse's private business dispute, permitting a private organization to use the judge's title in promotional material, or being a featured participant in a charity's fund-raising event.

Practice of Law by Part-Time Judges. While lawyers who serve as part-time justices of town, village and some city courts are permitted to practice law, there are limitations in the Rules on the scope of that practice. For example, a part-time judge may not act as an attorney on any matter in his or her own court. Nor may a part-time lawyer-judge practice law before another part-time lawyer-judge sitting in the same county. In 2001, one part-time judge was cautioned for representing clients before the town board in the town where the judge presides.

Audit and Control. Seven part-time town or village justices were cautioned for failing to make prompt reports, deposits and/or remittances to the State Comptroller of court-collected funds, such as traffic fines, after audits by the Comptroller's Office. There was no indication of misappropriated funds, and the judges all took appropriate administrative steps to avoid such problems in the future.

Other Cautions. One judge was cautioned for failing to take steps to assure compliance with Part 36 of the Chief Judge's Rules, requiring that fiduciary appointments not be made to individuals who had received other appointments within a 12-month period where the compensation is anticipated to exceed \$5,000.

Follow Up on Caution Letters. Should the conduct addressed by a letter of dismissal and caution continue or be repeated, the Commission may authorize an investigation on a new complaint, which may lead to a Formal Written Complaint and further disciplinary proceedings. In certain instances, such as audit and control and records keeping

matters, the Commission will authorize a follow-up review of the judge's finances and records, to assure that promised remedial action was indeed taken.

Disregard of a Caution May Be Used in Subsequent Proceedings

In 1999, the Court of Appeals, in upholding the removal of judge who *inter alia* used the power and prestige of his office to promote a particular private defensive driver program, noted that the judge had persisted in his conduct notwithstanding a prior caution from the Commission that he desist from such conduct. *Matter of Assini v. Commission on Judicial Conduct*, 94 NY2d 26 (1999).